

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	Case No. 1:11-CR-344
v.)	
)	Hon. Leonie M. Brinkema
HOWARD R. SHMUCKLER,)	
)	
Defendant.)	

NOTICE OF SUPPLEMENTAL AUTHORITY

The United States of America hereby files a Notice of Supplemental Authority to bring to the Court's attention the Fourth Circuit's decision in United States v. Day, ___ F.3d ___, No. 11-5218, 2012 WL 5954690 (4th Cir. Nov. 29, 2012).

In the Day case, which is binding authority on this Court, the Fourth Circuit held that the Supreme Court's recent decision in United States v. Southern Union, 132 S. Ct. 2344 (2012), does not extend the principals articulated in Apprendi v. New Jersey, 530 U.S. 466 (2000) to restitution decisions. The court recognized that while "Southern Union makes clear that Apprendi requires a jury determination regarding any fact that increases the penalty for a crime beyond the prescribed statutory maximum, * * * there is no prescribed statutory maximum in the restitution context; the amount of restitution that a court may order is instead indeterminate and varies based on the amount of damage and injury caused by the offense." Day, 2012 WL 5954690, at *17 (quotations omitted) (emphasis in original). "As a consequence, the rule of Apprendi is simply not implicated to begin with by a trial court's entry of restitution." Id.

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November 2012, I filed electronically the foregoing Notice of Supplemental Authority using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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